



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE G.R. No. 224900
PHILIPPINES,

Plaintiff-Appellee, Present:

CARPIO, J., Chairperson,
PERALTA,
MENDOZA,
LEONEN, and
MARTIRES, JJ.

- versus -

NESTOR M. BUGARIN,
Accused-Appellant.

Promulgated:

15 MAR 2017

X-----X

DECISION

PERALTA, J.:

This case seeks to reverse and set aside the Decision¹ dated July 31, 2015 of the Court of Appeals (CA) in CA-G.R. CEB-CR-HC No. 01530. The CA affirmed and modified the Joint Judgment² of the Regional Trial Court (RTC) of Cebu City, Branch 12, dated July 5, 2012 in Criminal Case Nos. CBU-83610, CBU-83611, and CBU-83613, which found accused-appellant Nestor Bugarin y Martinez guilty beyond reasonable doubt of the crimes of double murder and attempted murder.

Informations were filed charging Bugarin with two (2) counts of murder and one (1) count of attempted murder, which read:

¹ Penned by Associate Justice Germano Francisco D. Legaspi, with Associate Justices Pamela Ann Abella Maxino and Josep Y. Lopez concurring; *rollo*, pp. 5-28.
² Penned by Judge Estela Alma A. Singco; *CA rollo*, pp. 166-190.

Criminal Case No. CBU-83610
For: Murder

That on the 30th day of May 2008 at about 8:50 o'clock in the evening, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, armed with an unlicensed firearm of undetermined caliber, with deliberate intent, with intent to kill, with treachery and evident premeditation, did then and there suddenly and unexpectedly attack, assault and use personal violence upon one ESMERALDO B. PONTANAR by shooting him repeatedly with the use of said firearm and hitting him on the different parts of his body as a consequence of which said ESMERALDO B. PONTANAR died [a] few minutes thereafter due to "HYPOVOLEMIC SHOCK SECONDARY TO MULTIPLE GUNSHOT WOUNDS."

CONTRARY TO LAW.

Criminal Case No. CBU-83611
For: Murder

That on the 30th day of May 2008 at about 8:50 o'clock in the evening, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, armed with an unlicensed firearm of undetermined caliber, after having just shot one Esmeraldo B. Pontanar with the use of said firearm for which the accused is also being separately charged with Murder, with deliberate intent, with intent to kill, with treachery and evident premeditation, and without regard to rank and age of victim did then and there suddenly and unexpectedly attack, assault and use personal violence upon one CRISTITO C. PONTANAR, a 72-year old father-in-law of the accused, by shooting him with the use of said firearm when the latter came to the rescue of his said son, Esmeraldo B. Pontanar, by pleading to the accused to stop the shooting, thereby hitting him on the abdomen as a consequence of which said CRISTITO C. PONTANAR died [a] few minutes thereafter due to "HEMORRHAGIC SHOCK SECONDARY TO GUNSHOT WOUND."

CONTRARY TO LAW.

Criminal Case No. CBU-83613
For: Attempted Murder

That on the 30th day of May 2008 at about 8:50 o'clock in the evening, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, armed with an unlicensed firearm of undetermined caliber, after having just shot one Esmeraldo B. Pontanar with the use of said firearm for which the accused is also being separately charged with murder and frustrated murder, with deliberate intent, with intent to kill, with treachery and evident premeditation, did then and there suddenly and unexpectedly attack, assault and use personal violence upon one Maria Glen Neis Pontanar by shooting her, thereby inflicting upon her the following injuries:



“THROUGH & THROUGH GUNSHOT WOUND DISTAL
THIRD, LEFT THIGH

thus, commencing the commission of the felony directly by overt acts but which nevertheless did not perform all the acts of execution which would have produced the crime of murder by reason of some cause or accident other than his own spontaneous desistance, that is, by the timely act of said Maria Glen Neis Pontanar in running away and taking shelter inside a nearby house.

CONTRARY TO LAW.³

Upon arraignment, Bugarin pleaded not guilty to the charges. He admitted having shot Esmeraldo, Cristito, and Maria Glen, all surnamed Pontanar, but insisted that he acted in self-defense. Hence, pursuant to Section 11(e), Rule 119 of the Rules of Court, a reverse trial ensued.

The factual and procedural antecedents of the case are as follows:

Bugarin contended that what he had done was merely an act of self-defense. At the time of the incident, he was watching television at home when his wife, Anecita went out to walk their dogs. Then he heard her having an altercation with Maria Glen. At first, he did not want to intervene but then he saw his brother-in-law and Maria Glen's husband, Esmeraldo, approaching and carrying a 9 mm pistol, a .45 caliber gun, and an M16 rifle. Then Esmeraldo started shouting in front of their house, challenging him to go out. Bugarin hesitated to go out at first since Esmeraldo could easily shoot him with his firearms. He changed his mind when his son convinced him to go out and help his mother. So Bugarin went out and shouted angrily at Esmeraldo, then the latter began to draw his gun. This prompted Bugarin to draw his own gun and shoot Esmeraldo twice. Esmeraldo was thrown backwards and when he was about to fall to the ground, Bugarin shot him one more time. Thereafter, his father-in-law, Cristito, came rushing towards his son. He confronted Bugarin and tried to slap him, but he was able to avoid getting hit. Cristito then looked at his son's body on the ground. Believing that Cristito would get his son's firearm and shoot him, Bugarin acted quickly and shot him first. Then Esmeraldo's son, Paulo, threw stones at Bugarin. This angered him so he likewise shot him. Thereafter, he saw Maria Glen with a pipe, who was about to strike Anecita with it, so he also shot her, hitting her in the leg.

On the other hand, the prosecution alleged that the Pontanars and the Bugarins had been harboring ill-feelings towards each other. On the evening of May 30, 2008, the spouses Esmeraldo and Maria Glen were on their way to the house of their father, Cristito, which was likewise near the house of the Bugarins. When they were close to the house of the Bugarins,

³ *Id.* at 166-168.



Esmeraldo's sister, Anecita, then started throwing gravel and sand at them. Esmeraldo asked her to stop but she refused to listen. Thereafter, Bugarin, Anecita's husband, came out of their house and suddenly shot Esmeraldo several times. Esmeraldo sustained two (2) gunshot wounds in the back and one (1) in his left side, which later took his life. Maria Glen immediately ran and hid behind a parked car to save herself. She then saw her father-in-law, Cristito, running out of his house towards Esmeraldo's direction. Cristito raised his hands and begged Bugarin to stop shooting. But Bugarin also shot him, causing his death. Bugarin then looked for Maria Glen and when he finally found her, he also shot her. Fortunately, Maria Glen was only hit in her thigh.

On July 5, 2012, the RTC of Cebu City found Bugarin guilty beyond reasonable doubt of double murder and attempted murder in Criminal Case Nos. CBU-83610, CBU-83611, and CBU-83613, with the special aggravating circumstance of the use of unlicensed firearm in all three (3) cases, thus:

WHEREFORE, judgment is hereby rendered as follows:

1. In Criminal Case No. **CBU-83610**, the court finds the accused **NESTOR MARTINEZ BUGARIN** guilty beyond reasonable doubt of the offense of Murder defined and penalized under Art. 248 of the Revised Penal Code as amended by Sec. 6 of Republic Act 7659 as charged in the Information, and hereby sentences him to suffer the penalty of Reclusion Perpetua; to indemnify the heirs of the deceased Esmeraldo B. Pontanar the sum of ₱75,000.00 as civil indemnity for his death and ₱50,000.00 as Moral Damages for the pain and anguish suffered by the heirs as a result of his death; Exemplary damages in the amount of ₱25,000.00 and actual damages in the total sum of ₱245,490.00, all indemnifications are without subsidiary imprisonment in case of insolvency.

2. In Criminal Case No. **CBU-83611**, the court finds the accused **NESTOR MARTINEZ BUGARIN** guilty beyond reasonable doubt of the offense of Murder defined and penalized under Art. 248 of the Revised Penal Code as amended by Sec. 6 of Republic Act 7659 as charged in the Information, and hereby sentences him to suffer the penalty of Reclusion Perpetua; to indemnify the heirs of the deceased Cristito C. Pontanar the sum of ₱75,000.00 as civil indemnity for his death and ₱50,000.00 as Moral Damages for the pain and anguish suffered by the heirs as a result of his death, all indemnifications are without subsidiary imprisonment in case of insolvency.



3. In Criminal Case No. **CBU-83613**, the court finds the accused **NESTOR MARTINEZ BUGARIN** guilty beyond reasonable doubt of the offense of Attempted Murder as charged in the Information, and hereby sentences him to suffer the penalty of imprisonment of an indeterminate sentence ranging from six (6) years *prision correccional* as minimum to twelve (12) years of *prision mayor* as maximum to indemnify the offended party Maria Glen Neis Pontanar the amount of ₱10,000.00 as Moral damages; and actual damages in the amount of ₱30,909.48, all indemnifications are without subsidiary imprisonment in case of insolvency.

In the service of his sentence, accused, who is a detention prisoner, shall be credited with the entire period during which he has undergone preventive imprisonment.

No costs.

SO ORDERED.⁴

This prompted Bugarin to appeal before the CA. On July 31, 2015, the CA denied Bugarin's appeal and affirmed the RTC Decision with modifications, thus:

WHEREFORE, the instant appeal is **DENIED**. The assailed Joint Judgment dated July 5, 2012 of the Regional Trial Court of Cebu City, Branch 12 is hereby **AFFIRMED with MODIFICATION** as follows:

1. In Criminal Case No. CBU-83610, the guilt of Nestor M. Bugarin for the crime of murder and the corresponding penalty imposed upon him are **AFFIRMED**. The grant of civil indemnity, actual damages, and moral damages, in the amount determined by the trial court, is **AFFIRMED**. The award of exemplary damages is **INCREASED** to ₱30,000.00.

2. In Criminal Case No. CBU-83611, Nestor M. Bugarin is found **GUILTY** of **HOMICIDE** and accordingly imposed an indeterminate penalty of ten (10) years and one (1) day of *prision mayor* as minimum to twenty (20) years of *reclusion temporal* as maximum. Bugarin is **ORDERED** to pay the heirs of Cristito the amount of ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; and ₱30,000.00 as exemplary damages.

3. In Criminal Case No. CBU-83613, Nestor M. Bugarin is found **GUILTY** of **ATTEMPTED HOMICIDE** and accordingly imposed an indeterminate penalty of six (6) months of *arresto mayor* as minimum to six (6) years of *prision correccional* as maximum. The awards for actual damages and moral damages as imposed by the trial court are **AFFIRMED**.

⁴ *Id.* at 189-190. (Emphasis in the original)



4. The aggregate amount of the monetary awards awarded herein shall earn interest at the rate of six percent (6%) per annum from the finality of this Decision until the same is fully paid.

SO ORDERED.⁵

Bugarin is now before the Court, maintaining his innocence in all the instant cases.

The appeal is bereft of merit.

Self-defense is an affirmative allegation and offers exculpation from liability for crimes only if satisfactorily proved.⁶ Having admitted the shooting of the victims, the burden shifted to Bugarin to prove that he indeed acted in self-defense by establishing the following with clear and convincing evidence: (1) unlawful aggression on the part of the victims; (2) reasonable necessity of the means employed to prevent or repel the aggression; and (3) lack of sufficient provocation on his part.⁷ Bugarin, however, miserably failed to discharge this burden. One who admits killing or fatally injuring another in the name of self-defense bears the burden of proving the aforementioned elements. While all three elements must concur, self-defense relies first and foremost on proof of unlawful aggression on the part of the victim. If no unlawful aggression is proved, no self-defense may be successfully pleaded.⁸ Contrary to his claims, the evidence of the case shows that there was no unlawful aggression on the part of the victims. His version of the events was found to be less credible by the trial court. His testimony is incoherent, incredible, and specious. On the other hand, the trial court found Maria Glen's testimony to be more convincing. As the lone surviving victim, she affirmed that Bugarin suddenly fired at them, without any provocation on their part. As a rule, the appellate courts must give full weight and respect to the determination by the trial court on the credibility of witnesses, since the trial judge has the best opportunity to observe their demeanor. While it is true that this rule admits of certain exceptions, none of such are extant in this case.⁹

Self-defense cannot be justifiably appreciated when it is extremely doubtful by itself. Indeed, in invoking self-defense, the burden of evidence is shifted and the accused claiming self-defense must rely on the strength of his own evidence and not on the weakness of the prosecution.¹⁰ In the case at bar, Bugarin likewise failed to sufficiently establish that Esmeraldo was

⁵ *Rollo*, pp. 27-28. (Emphasis in the original)

⁶ *People v. Gutierrez*, 625 Phil. 471, 480 (2010).

⁷ *Guevarra v. People*, 726 Phil. 183, 194 (2014).

⁸ *People v. Gutierrez*, *supra* note 6, at 481.

⁹ *Id.*

¹⁰ *Id.* at 482.



actually carrying three (3) firearms and that he attempted to pull out one of his guns to shoot him. However, when asked what happened to the other firearms or where they went when Esmeraldo pulled out one of the guns, Bugarin answered that he did not know. Also, Anecita herself testified that she did not see Esmeraldo carrying anything. He merely held the railings of their gate when Bugarin went out of their house and shot him. Indeed, nothing in this act would reveal that there was unlawful aggression on Esmeraldo's part. Maria Glen also never actually struck or attempted to strike Anecita with the steel pipe. Neither can Cristito's alleged act of trying to slap Bugarin and thereafter staring at the wounded body of his son on the ground be considered unlawful aggression that he must necessarily repel. Bugarin simply assumed and imagined that Cristito would get his son's gun to shoot him.

Murder is committed by any person who, not falling within the provisions of Article 246, shall kill another with treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.¹¹ There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms which tend directly and specially to ensure its execution, without risk to himself arising from the defense which the offended party might make. Treachery is not presumed but must be proved as conclusively as the crime itself.¹² Bugarin suddenly fired at Esmeraldo without reason or warning. According to the medical report, Esmeraldo's wounds would establish that he was shot in the back twice and also in his left side, giving him no means of retaliation or escape, and without any risk to Bugarin. In fact, Bugarin himself said that when Esmeraldo was thrown backwards and was about to fall to the ground, he shot him again to make sure he was "finished."¹³ A finding of the existence of treachery should be based on clear and convincing evidence. Such evidence must be as conclusive as the fact of killing itself and its existence cannot be presumed.¹⁴ In the absence of proof beyond reasonable doubt that treachery attended the killing of the victim, the crime is homicide, not murder.¹⁵

As to the shooting of Cristito and Maria Glen, however, the Court has arrived at the conclusion that the trial court was correct in appreciating treachery as a qualifying circumstance. While the CA found Bugarin guilty for the lesser crimes of homicide and attempted homicide, respectively, the Court is constrained to review the entire records of the case pursuant to the well-settled rule that when an accused appeals from the sentence of the trial court, he waives his constitutional safeguard against double jeopardy and

¹¹ Article 248, Revised Penal Code

¹² *People v. Placer*, 719 Phil. 268, 280 (2013).

¹³ CA *rollo*, p. 170.

¹⁴ *Cirera v. People*, G.R. No. 181843, July 14, 2014, 730 SCRA 27, 48.

¹⁵ *People v. Placer*, *supra* note 12, at 281.



throws the entire case open to the review of the appellate court, which is then called upon to render such judgment as the law and justice dictate, whether favorable or unfavorable to him.¹⁶ The essence of treachery is the sudden and unexpected attack by the aggressor on the unsuspecting victims, depriving the latter of any real chance to defend themselves, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victims.¹⁷

Here, Bugarin's attack on Cristito was sudden and unexpected. The alleged provocation on Cristito's part was uncorroborated and not proven. While Bugarin claims that Cristito attempted to slap him, Anecita testified that she did not see this as she was already inside their house when Bugarin shot her father. The trial court gave more credence to Maria Glen's narration that Cristito was raising his hands and pleading for Bugarin to stop when the latter shot him at close range. More importantly, Bugarin himself stated that when he shot Cristito in the chest, the latter was looking down at the dead body of his son sprawled on the ground. He shot him "*dahil konsintidor, hindi marunong makisama, magsama na silang mag-ama, because he is siding (sic) his son,*"¹⁸ clearly manifesting that he knowingly chose his mode of attack and intended it to accomplish his wicked intent of likewise killing the father rather than a mere impulsive reaction to a surprising turn of events. In order for the qualifying circumstance of treachery to be appreciated, the following requisites must be shown: (1) the employment of means, method, or manner of execution would ensure the safety of the malefactor from the defensive or retaliatory acts of the victim, no opportunity being given to the latter to defend himself or to retaliate, and (2) the means, method, or manner of execution was deliberately or consciously adopted by the offender. The qualifying circumstance of treachery or *alevosia* does not even require that the perpetrator attack his victim from behind. Even a frontal attack could be treacherous when unexpected and on an unarmed victim who would be in no position to repel the attack or avoid it. The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape the sudden blow. Indubitably, Cristito was unarmed and had no inkling that an attack was forthcoming. He neither had a chance to mount a defense. In such a rapid motion, Bugarin shot Cristito, affording the latter no opportunity to defend himself or fight back. The deliberate swiftness of Bugarin's attack significantly diminished the risk to himself that may be caused by the retaliation of the victim.¹⁹ The evidence sufficiently established that Bugarin deliberately and consciously adopted the means of executing the crime against his defenseless 72-year-old father-in-law.

¹⁶ *People v. Sanico*, G.R. No. 208469, August 13, 2014, 733 SCRA 158, 170.

¹⁷ *People v. Gutierrez*, *supra* note 6, at 482.

¹⁸ *Supra* note 13.

¹⁹ *People v. Amora*, G.R. No. 190322, November 26, 2014, 742 SCRA 667, 680.



Lastly, with respect to Maria Glen, it is true that after having seen what Bugarin had done to her husband and father-in-law, she was already forewarned of the danger to her life. She actually managed to flee and hide after she was shot. While such ability to avoid greater harm by running away may be an indicator that no treachery exists,²⁰ treachery may still be appreciated where the victim was unarmed, defenseless, and unable to flee at the time of the infliction of the *coup de grace*,²¹ as in this case. Bugarin already commenced his attack with a manifest intent to kill Maria Glen but failed to perform all the acts of execution by reason of causes independent of his will, *i.e.*, poor aim. Maria Glen was likewise not in any position to defend herself or repel the attack since she was unarmed. Thus, the trial court aptly appreciated treachery as a circumstance to qualify the crimes to murder and attempted murder.

With respect to the penalties in Criminal Case Nos. CBU-83610 and CBU-83611, the Court upholds the ones that the RTC imposed, but modifies the amount of damages according to the most recent jurisprudence.²² Bugarin admitted that he used an unlicensed .45 caliber gun in shooting the victims. Presidential Decree No. 1866,²³ as amended by Republic Act (R.A.) No. 8294, treats the unauthorized use of a licensed firearm in the commission of the crimes of homicide or murder as a special aggravating circumstance. Thus, the same cannot be offset by an ordinary mitigating circumstance²⁴ such as voluntary surrender, as in the instant case. In both Criminal Case Nos. CBU-83610 and CBU-83611, Bugarin must pay Esmeraldo and Cristito's heirs ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. In Criminal Case No. CBU-83613, however, the lower court should not have appreciated the use of the unlicensed firearm as a special aggravating circumstance since at the time the tragic incident took place, R.A. No. 8294 on illegal possession of firearm was then the applicable law, and as held in the case of *People v. Ladjaalam*,²⁵ the use of unlicensed firearm may only be considered if the same is used in the killing. Hence, in the absence of the special aggravating circumstance of the use of unlicensed firearm and any other aggravating circumstance, the mitigating circumstance of voluntary surrender should be appreciated in favor of Bugarin. The penalty for attempted murder is *prision mayor*, which is two (2) degrees lower from the penalty of *reclusion perpetua* to death for consummated murder. Since the mitigating circumstance of voluntary surrender is present in this case, the maximum penalty shall be taken from the minimum period of *prision mayor* which is six (6) years and one (1) day to eight (8) years. Applying the Indeterminate Sentence Law, the minimum penalty shall be taken from any

²⁰ *Supra* note 14.

²¹ *People v. Fieldad, et al.*, G.R. No. 196005, October 1, 2014, 757 SCRA 455, 471.

²² *People v. Ireneo Jugueta*, G.R. No. 202124, April 5, 2016.

²³ Entitled *Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunition or Explosives; and Imposing Stiffer Penalties for Certain Violations Thereof and for Relevant Purposes*

²⁴ *Palaganas v. People*, 533 Phil. 169, 196 (2006).

²⁵ 395 Phil. 1, 34 (2000).



of the periods of the penalty next lower in degree which is *prision correccional*. Thus, the penalty of four (4) years, two (2) months, and one (1) day of *prision correccional*, as minimum, to eight (8) years of *prision mayor*, as maximum, would be appropriate. Also, Bugarin must pay Maria Glen ₱25,000.00 as civil indemnity, ₱25,000.00 as moral damages, ₱25,000.00 as exemplary damages, and actual damages in the amount of ₱30,909.48.

WHEREFORE, PREMISES CONSIDERED, the Court **ADOPTS** the findings and conclusions of law in the Decision dated July 31, 2015 of the Court of Appeals in CA-G.R. CEB-CR-HC No. 01530 and **AFFIRMS with MODIFICATION** said Decision finding accused-appellant Nestor Bugarin y Martinez guilty beyond reasonable doubt as follows:

1. In Criminal Case No. CBU-83610, Bugarin is found guilty beyond reasonable doubt of the crime of Murder and is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole, and ordered to pay Esmeraldo Pontanar's heirs ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages,²⁶ and actual damages in the amount of ₱245,490.00;

2. In Criminal Case No. CBU-83611, Bugarin is found guilty beyond reasonable doubt of the crime of Murder and is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole, and ordered to pay Cristito Pontanar's heirs ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages; and

3. In Criminal Case No. CBU-83613, Bugarin is found guilty beyond reasonable doubt of the crime of Attempted Murder and is sentenced to suffer the indeterminate penalty of four (4) years, two (2) months, and one (1) day of *prision correccional*, as minimum, to eight (8) years of *prision mayor*, as maximum, and ordered to pay Maria Glen Neis Pontanar ₱25,000.00 as civil indemnity, ₱25,000.00 as moral damages, ₱25,000.00 as exemplary damages, and actual damages in the amount of ₱30,909.48.

All of the monetary awards shall incur an interest rate of six percent (6%) *per annum* from the finality of this judgment until fully paid.

SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



JOSE CATRAL MENDOZA
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice



SAMUEL R. MAITRES
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice

